Supreme Court, U.S.
FILED
MAR 7 2003

No. 02-1150

IN THE

Supreme Court of the United States

THOMAS A. MARTIN,

Petitioner,

v.

KEYCORP, KEY BANK NATIONAL ASSOCIATION and ROBERT G. QULIA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

KeyCorp is a publicly held and traded bank holding company and has no parent corporation and no publicly held company owns 10% or more of its stock. KeyBank National Association (f/k/a Key Bank of New York, N.A. and Key Bank of Southeastern New York) is a wholly owned bank subsidiary of KeyCorp.

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CASES:

Carino v. Town of Deerfield, 750 F. Supp. 1156 (N.D.N.Y. 1990), *aff'd without op.*, 940 F.2d 649 (2d Cir. 1991) 6

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42 U.S.C. § 1985 ..... 3, 5

RULES:

U.S. Sup. Ct. R. 10 6

REASONS FOR DENYING THE PETITION

This matter, that, unbelievably, has actually reached the point of a petition for a writ of certiorari to the Supreme Court of the United States, started with the Petitioner's filing of a *pro se* complaint in the United States District Court for the Middle District of North Carolina. Upon the Respondents' jurisdictional motion, the case was transferred to the Northern District of New York. The Petitioner's complaint alleged that the Respondents conspired to violate the Petitioner's federal constitutional rights in their efforts to collect a debt owed to the Respondents. The District Court granted the Respondents' summary judgment motion dismissing the complaint, denied the Petitioner's motion for recusal of the District Court Judge and granted the Respondents' motion for an injunction preventing the Petitioner from filing future litigation regarding the issues raised by Petitioner in the complaint. The Petitioner then filed a motion for reconsideration of the District Court's decision. The District Court denied Petitioners' motion for reconsideration and issued an order to show cause requiring the Petitioner to show cause why he should not be further sanctioned for filing a baseless motion for reconsideration. The District Court eventually issued an order sanctioning the Petitioner for his frivolous reconsideration motion. The Petitioner then appealed to the Second Circuit: (1) the order granting summary judgment, denying recusal and granting an injunction; (2) the order denying Petitioner's motion for reconsideration; and (3) the order sanctioning Petitioner for the frivolous reconsideration motion. The Second Circuit, in a Summary Order, affirmed all three District Court rulings.

The Petition for Writ of Certiorari presents four (4) questions. The first three questions generally challenge various internal procedures of the Second Circuit and the circuit courts of appeal generally. Question One alleges that the use of unpublished opinions by the circuit courts of appeal and the restricted precedential value of unpublished opinions violates due process and equal treatment under the law. Question Two challenges the Second Circuit's procedures with regard to unpublished opinions. Question Three alleges that the Second Circuit's procedures regarding the handling of *pro se* cases are unconstitutional. As evidenced by the record herein, neither the Second Circuit's ruling below or any of the previous proceedings, raised the issues sought by the Petitioner to be reviewed in his first three questions. The Petitioner has not alleged that he has been treated differently than any other litigant regarding the use and affect of unpublished opinions and he has not alleged that he has been treated any differently than other similarly situated *pro se* litigant regarding internal court procedures. It is respectfully submitted that the Petition as to these three questions should be denied.

The only substantive question raised by the Petitioner is Question Four that raises the narrow issue of the ability of a private attorney representing a client to assert the *res judicata*/claim preclusion effect of a prior proceeding determined in favor of the client. The Petitioner alleges that the District Court and the Second Circuit misapplied the concept of privity as it relates to claim preclusion. The Petitioner's argument that the District Court's ruling on this issue creates new law and overlooks established precedent is simply wrong. Nor does the underlying ruling create a conflict within the Federal system or a conflict with New York State law on the issue. In addition, the District

Court's decision dismissing the Petitioner's complaint included grounds for dismissal other than claim preclusion, including failure to state a cause of action under 42 U.S.C. § 1983 and § 1985 and *issue* preclusion (collateral estoppel), neither of which are dependent on privity issues. Therefore, even if the District Court and Second Circuit erred in this ruling, it does not alter the outcome in any material respect.

I.

NEITHER THE RECORD BELOW OR THE DECISION BELOW RAISE THE QUESTIONS PRESENTED IN QUESTIONS ONE, TWO AND THREE OF THE PETITION

The issues presented in Questions 1, 2 and 3 of the Petition focus solely on court procedures involving the use of unpublished, summary orders and how *pro se* claims are handled by court personnel. None of the issues raised in these Questions were raised or litigated below or were addressed in either the District Court or the Second Circuit decisions. There is simply no basis to grant certiorari in this case to review these issues raised by the Petitioner here for the first time. It is respectfully submitted that to the extent that there is controversy within the legal community and/or the Federal courts regarding the use of summary orders and the handling of pro se complaints, this lawsuit is not the proper forum to air those differences or to determine that changes in procedure are needed.

II.

THE DISTRICT COURT'S RULING REGARDING CLAIM PRECLUSION, AFFIRMED BY THE SECOND CIRCUIT, DOES NOT CREATE A CONFLICT BETWEEN THE FEDERAL COURTS OR BETWEEN THE FEDERAL COURTS AND NEW YORK LAW

The Petitioner's underlying complaint in this matter alleged that the Respondents acted in concert to deprive him of his constitutional rights and wrongfully prevented him from obtaining a discharge in his bankruptcy. As outlined in the District Court's decision in this matter, this action is only one of many brought by Petitioner in connection with Respondent KeyBank's attempt to collect a debt owed by the Petitioner and the Petitioner's subsequent bankruptcy. This latest litigation is only the most recent attempt by Petitioner to raise legal and factual issues that have been repeatedly raised by Petitioner and determined against him. The Petitioner now uses the occasion of his Petition for certiorari to once again raise the same scurrilous and unsupported accusations against the Respondents. Needless to say, the Respondents once again reject and dispute the Petitioner's version of the underlying factual events in this case as set forth in the Petition and his conclusions regarding the District Court's motivations in deciding both this case and others. The Federal court system has given the Petitioner every opportunity to litigate these issues and, from the Respondents' point of view, has been consistently deferential to the Petitioner's *pro se* status. Despite the Petitioner's continuing play for sympathy, it is the Petitioner that comes

before this Court with unclean hands. As the District Court found in its decision below:

> Plaintiff has shown a complete disregard for the decisions of the Second Circuit, this Court, and the Bankruptcy Court. His attempts to ignore these prior decisions have caused other parties to incur the expense of litigation. Although Plaintiff may be a *pro se* party, he has shown a unique familiarity with the courts and has continued to file claims to which there is no objective good faith expectation of success.

See Petitioner's Petition at a18.

The decision of the District Court below, affirmed by the Second Circuit, dismissed the Petitioner's complaint based on a failure to state a cause of action under 42 U.S.C. § 1983 and § 1985 due to the Petitioner's failure to allege or show state action under § 1983 or racial or other class-based animus under § 1985. As an alternative basis, the District Court also found that the complaint must be dismissed on *res judicata*/claim preclusion grounds. The District Court determined that the same core issues raised in this litigation had already been unsuccessfully litigated by the Petitioner. The Petitioner argued that *res judicata* was not available as to Respondent Qulia because he was not a party to the previous litigation, or in privity with any party. The District Court properly determined that there was sufficient privity between attorney Qulia and Respondent KeyBank, whom Qulia represented in the previous proceedings, to afford Qulia *res judicata* protection in this action, involving the same issues. This is the narrow issue raised by Question Four of the Petition. The decision of the District Court in this regard

is not in conflict with either other Federal decisions at the District or Circuit Court level and is not in conflict with the law of New York. The cases cited by the Petitioner in the Petition do not lead to a contrary conclusion and do not address the particular factual situation present in this case and simply stand for the proposition that privity is an element of a *res judicata* defense. Even if one were to take issue with the District Court's decision in this regard, it is at best an "erroneous factual finding or the misapplication of a properly stated rule of law" under Rule 10 of the Supreme Court Rules and should not form the basis for a grant of certiorari.

In addition, the dismissal on *res judicata* grounds was only one of three separate grounds for dismissal, the first being failure to state a cause of action, as set forth above. In addition, the District Court separately determined that the complaint must be dismissed on collateral estoppel/issue preclusion grounds. Under issue preclusion, whether Qulia was in privity with a party in a previous proceeding is irrelevant. A defendant, such as Qulia in this action, does not need to have been a party, or in privity with a party, in a previous lawsuit to assert issue preclusion as a defense. Issue preclusion may be used defensively by a defendant seeking to prevent a plaintiff from re-litigating an issue that the plaintiff previously litigated unsuccessfully against *other defendants*. Defensive issue preclusion only requires that the party against whom preclusion is asserted (here the Petitioner) was a party in the earlier action. *See Carino v. Town of Deerfield*, 750 F. Supp. 1156 (N.D.N.Y. 1990), *aff'd without op.*, 940 F.2d 649 (2d Cir. 1991). Therefore, regardless of the ruling of the District Court on claim preclusion grounds, there was a sufficient independent basis on issue preclusion grounds to dismiss the complaint. There is therefor no basis to grant certiorari as to Question Four of the Petition.

CONCLUSION

For all the forgoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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